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TO RUEHC/SECSTATE WASHDC 0061  
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RUEHIN/AIT TAIPEI 0002  
RUEAUSA/DEPT OF HHS WASHINGTON DC 0002  
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC 0001  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC 0020  
RUEATRS/DEPT OF TREASURY WASHINGTON DC 0016  
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC 0001  
RUCNFB/FBI WASHDC 0001  
RUEAIIA/CIA WASHDC 0023  
RUEKJCS/DIA WASHDC 0023

UNCLAS GUANGZHOU 000720

SIPDIS

State for EAP/CM - SFlatt; EEB - JUrban  
State for INL - JVigil  
USTR for China Office - AWinter; IPR Office - RBae; and OCG -  
SMcCoy  
Commerce for National Coordinator for IPR Enforcement  
Commerce for CISrael  
Commerce for MAC 3204/ESzymanski  
Commerce for MAC 3043/McQueen  
Commerce for MAC 3042/SWilson, JYoung  
Commerce for NWinetke  
LOC/Copyright Office - MPoor  
USPTO for Int'l Affairs - LBoland, EWu  
DOJ for CCIPS - MDubose  
DOJ for SChembtob  
FTC for Blumenthal  
FBI for LBryant  
DHS/ICE for IPR Center - DFaulconer, TRandazzo  
DHS/CBP for IPR Rights Branch - GMcCray, PPizzeck  
ITC for LLevine, LSchlitt

E.O. 12958: N/A

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SUBJECT: South China IPR: Rights Holders Call for "IPR Summit" and  
More High Level Visits at Roundtable Discussion

REF: A) GUANGZHOU 132, B) 2007 GUANGZHOU 1241

¶1. Summary: Lax enforcement remains the key problem for intellectual property (IP) rights holders operating in south China, according to the 30 business and legal professionals at the Consul General's December 2 IPR roundtable. Rights holders recommended that senior Obama Administration IP officials visit IPR hotspots like south China, as early as possible to see problems first-hand. Other comments and suggestions ranged from the need for increased transparency in the release of China's IPR enforcement data to the specific request that Shenzhen Municipal government resume cooperation with copyright owners whose optical discs have been pirated and sold within the city's jurisdiction. U.S. rights holders also proposed an industry-led IPR Summit with high-level USG participation and a JCCT IPR Working Group meeting in south China. These would help focus local attention on the need for solutions to infringement problems. End summary.

Proposal for an Industry-led "IPR Summit" in South China  
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¶2. Almost 30 business and legal professionals gathered to share insights and exchange IP-related experiences at the Consul General's 2008 IPR Roundtable on December 2. A prominent Hong Kong-based attorney who represents several Fortune 500 U.S. companies in south China introduced the idea of USG support for organizing an industry-led "South China IPR Summit." Participants heartily supported the idea and said high-level USG participation would go a long way toward attracting attention from provincial and local

government leaders and enhance a dialogue to better protect IP rights. The conference could be held in Guangzhou or Shenzhen and would ideally include high-level participation from the U.S. Patent and Trademark Office, U.S. Coordinator for IP Enforcement, USTR, Department of Commerce, Customs, Department of State and other relevant agencies. Although industry would prefer to hold this type of meeting as early in 2009 as possible, the Consul General Goldberg suggested holding the conference in summer or fall to allow time to plan for success.

#### Site Visits, JCCT IPR Working Group Meetings in South China

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¶13. Even as participants brainstormed ideas for an "IP Summit", other rights holders emphasized that regardless of format or participants, the most effective U.S. government contribution to south China IP enforcement in 2009 would be high-level visits to Guangdong and Fujian provinces by new IP officials to see the problems first-hand. The visits could be independent of a specific event, or could be tied to routine bilateral meetings like the JCCT IPR Working Group.

#### Too Little Transparency for IPR Enforcement Information

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¶14. One Guangzhou-based attorney who represents several major international brands said many jurisdictions had significantly improved dissemination of civil case results in recent years, but improvement also highlighted the dearth of information stemming from administrative and criminal IPR cases. Other participants also expressed concern that reporting and disclosure of IP enforcement information is erratic, with less transparency when agencies become

distracted by other issues (like the recent Melamine contamination incident) or are exposed to increased scrutiny by media or foreign governments. South China rights holders are currently discussing industry-based solutions to the lack of transparency, but all participants agreed that the best solution is for China's national and local government leaders to release more information at all levels and across all enforcement agencies.

#### Widespread Desire for Improved Legal System

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¶15. Rights holders reemphasized long-needed reforms in China's legal system, including calls for better paid judges and prosecutors, more movement towards specialized courts to handle both civil and criminal IP cases, and fewer suspended sentences for convicted IP infringers in criminal cases. Participants also said more staff and other resources are critical for local IPR enforcement agencies like Customs and the Administration of Industry and Commerce (AIC). One attorney suggested a system of fee-based administrative tribunals for handling routine cases and settling IP-related disputes that do not meet legal thresholds for court cases. Participants agreed that without these and other basic adjustments, enforcement problems would continue.

¶16. Participants also voiced concerns about more specific IPR enforcement issues, including the recent discovery of counterfeit Blu-Ray optical discs in certain Chinese markets. Representatives of entertainment industry rights holders called on the Shenzhen government to resume direct cooperation on optical disc investigations that had been suspended after the U.S. filed its WTO cases. Rights holders said they would benefit greatly from a resumption of access the Shenzhen government's special optical disc forensics laboratory, as well as a commitment from the local Public Security Bureau (PSB) to actively investigate Blu-Ray counterfeiting operations. Another participant said all rights holders would benefit if violators were held responsible for paying the warehousing and destruction costs in cases where authorities seize counterfeit items and assess penalties, a major change from current practice in most Chinese jurisdictions. IPR enforcement at trade fairs was also identified as a continuing problem area by many rights holders, with one telling of consecutively suing an industry trade fair over two years until the trade fair finally addressed rights holder concerns in the third year for fear of being sued again.

Comment

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¶7. It was clear from this exchange that IP enforcement continues to exact high costs on U.S. rights holders operating in south China, and they agree that problems can only be addressed by a combination of sustained public and private efforts. Participants look forward to working with the new administration and see 2009 as an opportunity for senior officials to get the attention of local and provincial leaders here on the need for better IPR enforcement. The consulate will continue to engage local contacts, both U.S. and Chinese, on new programs, like a Summit, and increase our capacity building efforts as we raise the profile of IP matters throughout the consular district.

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